

These are the tentative rulings for civil law and motion matters set for Friday, March 13, 2015, at 10:00 a.m. in the **TAHOE DIVISION** (Department 14) of the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m., Thursday, March 12, 2015. Notice of request for oral argument to the court must be made by calling (530) 584-3463. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER TRILLA E. BAHRKE AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 14, LOCATED AT 2501 N. LAKE BLVD., TAHOE CITY, CALIFORNIA.**

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**1. T-CV-0001947 Steele, Christian & Steele, Shirley vs. Bank of America, N.A**

The demurrer to the second-amended complaint is overruled in part and sustained in part without leave to amend.

As a preliminary matter, the demurrer was noticed for hearing February 27, 2015, but was not heard that date. The parties agreed in court on January 9, 2015, that the matter would be heard March 13, 2015, and that defendant did not need to renote the demurrer for that date.

The request for judicial notice is granted. In addition to the matters presented by defendant, the court takes judicial notice of its own case T-CV-0001620, *Bank of America v. Steele*.

The demurrer to the first cause of action for wrongful eviction is overruled. Defendant's arguments—both on the sufficiency of the allegations and on the statute of limitations—depend on the misplaced argument that this claim is one for malicious prosecution.

The second-amended complaint, while affirming plaintiffs' enduring belief that the underlying unlawful detainer should not have succeeded—alleges that the wrongful conduct was forcible removal of plaintiff from the premises "in direct violation of this court's Order and absent a Writ of Possession . . . ." (¶ 19.) The remainder of the cause of action describes the alleged hardship suffered by plaintiffs' family as a result of this conduct in violation of court orders and / or without support of the execution statute. That is, the claim seeks injury for alleged improper enforcement of a judgment. A claim for malicious prosecution, on the other hand, requires allegations of a court action (lawsuit) by defendant without probable cause and with malice, which terminated favorably for plaintiff.

The cases cited by defendant are all inapplicable in that they involve claims that focus on the unlawful detainer case and its prosecution—not claims related to alleged improper conduct in execution of a judgment. Accordingly, the demurrer is not well taken and is overruled.

The demurrer to the second cause of action is sustained without leave to amend. Civil Code section 789.3 does not define "landlord" or "tenant" for purposes of the statute. However

defined, the statute applies only to landlord conduct toward an occupant "under any lease or other tenancy or estate at will." Nothing in the second amended complaint alleges that plaintiffs' occupancy after foreclosure constituted a "lease or other tenancy or estate at will." Such allegations are required to state a claim under section 789.3. The plaintiffs bear the burden of showing how the complaint could be amended to cure the defect, but have not done so. Goodman v. Kennedy (1976) 18 Cal.3d 335, 349. Accordingly, leave to amend is denied.

The demurrer is overruled as to the third cause of action for conversion. Defendant's argument as to the statute of limitations fails because of a fundamental misunderstanding of the standards governing a demurrer. In ruling on a demurrer, the complaint is liberally construed with all inferences drawn "favorable to the plaintiff, not the defendant." Perez v. Golden Empire Transit Dist. (2012) 209 Cal.App.4th 1228, 1238.

The second amended complaint alleges that the court issued an oral ruling in the unlawful detainer case on September 20, 2010, and plaintiffs were evicted September 22, 2010. (§§ 8, 10.) However, the complaint also alleges that these occurred in September 2011. (§§ 35-36, 42-43, 48-49 & 58-59.) Defendant's own request for judicial notice shows that the default unlawful detainer judgment was filed April 2011 (Exhibit 7). Case file T-CV-0001620 shows that plaintiff did not file proofs of service in the unlawful detainer until February 2011, and that a stay of execution was later ordered while the court heard (and ultimately denied) a motion to set aside the default judgment. A writ of possession that had been earlier issued by the court was returned after execution in September 2011.

Construing these inconsistent allegations of the second amended complaint, together with matters of which the court has taken judicial notice, in plaintiffs' favor as is required, the court must conclude for this demurrer that the alleged conversion occurred in September 2011, and the conversion claim was filed within the 3-year statute of limitations period.

The demurrer is overruled as to the fourth cause of action for trespass to chattels for the reasons stated in the preceding paragraphs related to the claim for conversion.

The demurrer is sustained without leave to amend as to the fifth and sixth causes of action for intentional and negligent infliction of emotional distress. Plaintiffs did not oppose the demurrer to either cause of action. Both claims are barred by applicable 2-year statutes of limitations. The intentional infliction claim is barred by C.C.P. § 335.1, providing for a 2-year limitations period as of January 1, 2013. (C.C.P. § 340, cited by defendant and construed in cases cited by defendant, provided for a 1-year limitations period for intentional infliction claims through 2012.) The negligent infliction claim is subject to the 2-year limitations period of C.C.P. § 339(1) for negligence. Because the claims were filed more than 2 years after they accrued, both are time-barred. Plaintiff has not shown that these claims could be cured by amendment.

Defendant shall answer the second-amended complaint no later than April 1, 2015.

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